

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2316

AN ACT

AMENDING SECTIONS 48-3603 AND 48-3615, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 21, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 48-3615.01 AND 48-3615.02; RELATING TO FLOOD CONTROL DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 48-3603, Arizona Revised Statutes, is amended to
3 read:

4 48-3603. Powers, duties and immunities of district and board:
5 exemptions

6 A. A county flood control district organized under this article is a
7 political taxing subdivision of this state and has all the powers, privileges
8 and immunities granted generally to municipal corporations by the
9 constitution and laws of this state including immunity of its property and
10 bonds from taxation.

11 B. The board of directors shall exercise all powers and duties in the
12 acquisition and operation of the properties of the district and in carrying
13 out its regulatory functions under this article as are ordinarily exercised
14 by the governing body of a municipal corporation.

15 C. A district organized under this article, acting through its board
16 of directors, may:

17 1. Acquire by eminent domain, purchase, donation, dedication, exchange
18 or other lawful means rights-of-way for and construct, operate and maintain
19 flood control works and storm drainage facilities within or without the
20 district for the benefit of the district.

21 2. Acquire by eminent domain, purchase, donation, dedication, exchange
22 or other lawful means and dispose of by sale, exchange or other lawful means
23 real and personal property within the boundaries of the district.

24 3. Contract and join with this state, the United States or any other
25 flood control district or floodplain board, municipality, political
26 subdivision, governmental agency, irrigation or agricultural improvement
27 district, association, corporation or individual in acquiring, constructing,
28 maintaining and operating flood control works, and regulating floodplains.

29 4. Enter into contracts of indemnity to indemnify this state, the
30 United States or any other flood control district, municipality, political
31 subdivision, governmental agency, irrigation or agricultural improvement
32 district, association, corporation or individual against liability by virtue
33 of injuries, losses or damages occurring through the use of their facilities,
34 structures, streets, rights-of-way or properties in connection with the
35 operation of a flood control district and the regulation of floodplains.

36 5. Acquire and maintain existing flood control and drainage facilities
37 within the district for the benefit of the district if mutually agreeable to
38 the owners of such facilities.

39 6. Acquire, convert and maintain surplus irrigation facilities as
40 storm drainage facilities if mutually agreeable to owners of such facilities.

41 7. Construct, maintain and operate flood control and storm drainage
42 facilities and regulate floodplains in the district by agreement with this
43 state, counties, other municipal corporations, political subdivisions and
44 other persons and reimburse such agencies or persons for the cost of the
45 work.

1 8. On the dissolution of any other flood control district, assume the
2 assets and obligations of the other district.

3 9. Enter into intergovernmental agreements with other public agencies
4 pursuant to title 11, chapter 7, article 3 to carry out the objects and
5 purposes of the district.

6 10. Apply for, obtain, expend and repay flood control loans pursuant to
7 title 45, chapter 8, article 5.

8 11. Apply to the director of water resources for alternative flood
9 control assistance for flood control projects pursuant to section 45-1471,
10 except that the director shall not grant any such assistance for any project
11 unless the director has approved the project in advance of planning.

12 12. Sue and be sued, enter into contracts and generally do all things
13 which may be necessary to construct, acquire and maintain facilities, operate
14 the district and perform its regulatory functions and which are in the
15 interests of the district.

16 13. Adopt such rules and bylaws for its orderly operation as it sees
17 fit.

18 14. Appoint a chief engineer and general manager, who may be the county
19 engineer.

20 15. Appoint a treasurer, who may be the county treasurer, an attorney,
21 who may be the county attorney, and other employees it considers desirable
22 and necessary to carry out the purposes of the district. Any other work
23 required by the district may be performed by regular employees of the county
24 on assignment by the board of supervisors, except that regular county
25 employees shall not undertake construction projects with an estimated cost of
26 five thousand dollars or more.

27 16. Allow variances from the terms or regulations adopted pursuant to
28 this article to the extent permitted by section 48-3609, subsection B,
29 paragraph 7 and if, owing to peculiar conditions, a strict interpretation
30 would work an unnecessary hardship, if in granting the variance the general
31 intent and purposes of this article and the regulations will be preserved.

32 17. Construct, operate and maintain artificial groundwater recharge
33 facilities, and, if organized in a county having a population of more than
34 five hundred thousand persons according to the most recent United States
35 decennial census, underground storage and recovery facilities, if they have
36 flood control benefits, and contract and join with the United States, this
37 state and other governmental units for the purpose of constructing, operating
38 and maintaining multipurpose groundwater recharge, underground storage and
39 recovery and flood control facilities, except that a district shall not
40 expend district funds for any underground storage and recovery facility that
41 does not have flood control benefits.

42 18. Acquire real property by purchase, donation, dedication, exchange
43 or other lawful means, except by eminent domain, in areas suitable for
44 groundwater recharge projects.

1 19. Cooperate and join with other entities that engage in underground
2 water storage and recovery projects under title 45, chapter 3, including
3 multi-county water conservation districts and other political subdivisions.

4 20. Either alone, or by entering into any combination of contracts with
5 this state, the United States, any other flood control district, a floodplain
6 board, a municipality or other political subdivision, a government agency, an
7 irrigation or agricultural improvement district or an association,
8 corporation or individual, implement flood control enhancement solutions
9 including:

10 (a) Assistance for property owners within the floodplain and through
11 the elevation, bank stabilization and flood proofing of existing structures.

12 (b) Preservation and restoration of the floodplain.

13 (c) Maintenance of flood warning systems and associated flood response
14 plans.

15 21. ADOPT AND ENFORCE CIVIL PENALTIES FOR VIOLATIONS OF ITS REGULATIONS
16 OR ORDINANCES AND FOR UNAUTHORIZED DAMAGE AND INTERFERENCE TO THOSE DISTRICT
17 FACILITIES THAT ARE AUTHORIZED PURSUANT TO THIS CHAPTER.

18 22. PURSUANT TO THE AUTHORITY PRESCRIBED IN THIS CHAPTER, APPOINT
19 HEARING OFFICERS TO HEAR AND DETERMINE ACTIONS.

20 23. FOR ANY DISTRICT THAT INTENDS TO TAKE ENFORCEMENT ACTION PURSUANT
21 TO SECTION 48-3615.01, ADOPT WRITTEN RULES OF PROCEDURE FOR THE HEARING AND
22 REVIEW OF DECISIONS ON ACTIONS PRESCRIBED BY THIS CHAPTER.

23 24. ESTABLISH A BOARD OF HEARING REVIEW TO REVIEW DECISIONS OF HEARING
24 OFFICERS THAT ARE ISSUED PURSUANT TO SECTION 48-3615.01. THE BOARD OF
25 HEARING REVIEW SHALL CONSIST OF ONE MEMBER FROM EACH BOARD OF DIRECTORS'
26 DISTRICT OR THE BOARD OF DIRECTORS MAY AUTHORIZE THE CITIZENS' FLOOD CONTROL
27 ADVISORY BOARD OR THE BOARD OF REVIEW TO DESIGNATE A LIKE NUMBER OF ITS
28 MEMBERS TO SERVE AS THE BOARD OF HEARING REVIEW.

29 25. AUTHORIZE THE CHIEF ENGINEER OF THE DISTRICT TO APPLY FOR AND
30 OBTAIN ADMINISTRATIVE SEARCH WARRANTS FOR ENTRY AND INSPECTION FROM A LOCAL
31 COURT OF GENERAL JURISDICTION TO DETERMINE IF VIOLATIONS OF SECTION 48-3609,
32 48-3613, 48-3614 OR 48-3615 HAVE OCCURRED. THE WARRANTS SHALL BE SERVED BY A
33 PEACE OFFICER AS DEFINED IN SECTION 1-215. A REPORT OF ANY INSPECTIONS MADE
34 PURSUANT TO THIS SECTION SHALL BE PREPARED AND MADE AVAILABLE IN THE RECORDS
35 OF THE DISTRICT AND A COPY MAILED OR OTHERWISE DELIVERED TO THE OWNER WITHIN
36 FIFTEEN DAYS AFTER THE INSPECTION OF THE OWNER'S PREMISES.

37 D. The board shall adopt and enforce floodplain regulations as
38 provided in section 48-3609.

39 E. The board may adopt a fee schedule for review of applications for
40 permits and variances from or interpretations of the floodplain regulations.

41 F. The affirmative vote of a majority of the board of directors is
42 necessary to approve any measure. One member may adjourn any meeting at
43 which a quorum is not present.

44 G. The board shall keep a proper written record of all of its
45 proceedings, which shall be open to public inspection.

1 H. The accounts of the district are subject to annual and other audits
2 as provided by law.

3 I. Section 9-403 does not apply to a flood control district organized
4 under this article and section 9-402 does not apply when the district is
5 selling property to a political subdivision. If any property sold by the
6 district to a political subdivision without complying with section 9-402 is
7 subsequently sold by the political subdivision as undeveloped property for a
8 price exceeding the original sale price, the district shall be paid the
9 difference between the original price and the subsequent sale price. For the
10 purposes of this subsection, "political subdivision" means any incorporated
11 city or town, school district, charter school, community college or
12 university.

13 Sec. 2. Section 48-3615, Arizona Revised Statutes, is amended to read:

14 48-3615. Violation; classification; civil penalties; strict
15 liability

16 A. It is unlawful for a person to engage in any development or to
17 divert, retard or obstruct the flow of waters in a watercourse if it creates
18 a hazard to life or property without securing the written authorization
19 required by section 48-3613. Where the watercourse is a delineated
20 floodplain it is unlawful to engage in any development affecting the flow of
21 waters without securing written authorization required by section 48-3613.

22 B. A person who violates SUBSECTION A OF this section is guilty of a
23 class 2 misdemeanor.

24 C. A PERSON WHO VIOLATES THIS CHAPTER OR RULES ADOPTED PURSUANT TO
25 THIS CHAPTER MAY BE ASSESSED A CIVIL PENALTY NOT TO EXCEED THE FINE
26 CHARGEABLE FOR A CLASS 2 MISDEMEANOR. EACH DAY THE VIOLATION CONTINUES
27 CONSTITUTES A SEPARATE VIOLATION.

28 D. A PERSON WHO WITHOUT WRITTEN AUTHORIZATION FROM THE BOARD OF
29 DIRECTORS DAMAGES OR INTERFERES WITH A FACILITY THAT IS OWNED, OPERATED OR
30 OTHERWISE UNDER THE JURISDICTION OF THE DISTRICT IS STRICTLY LIABLE FOR BOTH
31 OF THE FOLLOWING:

32 1. ANY ACTUAL DAMAGES TO PERSONS OR PROPERTY THAT IS CAUSED BY THE
33 DAMAGE OR INTERFERENCE.

34 2. PAYMENT OF COSTS TO THE DISTRICT FOR REMEDIATING THE DAMAGE OR
35 INTERFERENCE.

36 Sec. 3. Title 48, chapter 21, article 1, Arizona Revised Statutes, is
37 amended by adding sections 48-3615.01 and 48-3615.02, to read:

38 48-3615.01. Notice of violation; hearing; final decision; civil
39 penalty; injunctive relief

40 A. IF THE CHIEF ENGINEER FINDS THAT A PERSON HAS ENGAGED OR IS
41 ENGAGING IN DEVELOPMENT IN THE FLOODPLAIN WITHOUT A FLOODPLAIN USE PERMIT,
42 HAS ENGAGED OR IS ENGAGING IN ANY DEVELOPMENT THAT IS NOT IN COMPLIANCE WITH
43 AN ACTIVE FLOODPLAIN USE PERMIT OR HAS DAMAGED OR INTERFERED WITH FACILITIES
44 THAT ARE AUTHORIZED PURSUANT TO THIS CHAPTER WITHOUT WRITTEN AUTHORIZATION OF
45 THE BOARD OF DIRECTORS, THE CHIEF ENGINEER SHALL ISSUE A NOTICE OF VIOLATION

1 TO THE OWNER, OCCUPANT OR MANAGER OF THE REAL PROPERTY ON WHICH THE
2 DEVELOPMENT IS LOCATED OR TO THE PERSON WHO HAS DAMAGED OR INTERFERED WITH
3 THE FACILITIES. THE NOTICE OF VIOLATION SHALL IDENTIFY THE VIOLATIONS
4 OBSERVED AND ORDER THE VIOLATOR TO CEASE AND DESIST ANY ONGOING ACTIVITY THAT
5 IS NOT IN COMPLIANCE WITH THE REGULATIONS ADOPTED PURSUANT TO THIS CHAPTER OR
6 CEASE AND DESIST ANY DAMAGE OR INTERFERENCE THAT IS NOT AUTHORIZED BY THE
7 BOARD. THE NOTICE OF VIOLATION SHALL INCLUDE THE DATE, TIME AND PLACE WHERE
8 THE PERSON RESPONDING TO THE NOTICE OF VIOLATION MAY APPEAR TO SHOW CAUSE WHY
9 THE NOTICE OF VIOLATION SHOULD BE VACATED.

10 B. ON RECEIPT OF THE NOTICE OF VIOLATION, THE PERSON MAY:

11 1. ADMIT THE ALLEGATIONS BY DOING EITHER OF THE FOLLOWING:

12 (a) APPEARING IN PERSON, BY ATTORNEY OR BY ANOTHER DESIGNATED
13 REPRESENTATIVE AT A TIME AND LOCATION GIVEN IN THE NOTICE OF VIOLATION.

14 (b) MAILING OR DELIVERING TO THE CHIEF ENGINEER A FORM PROVIDED WITH
15 THE NOTICE OF VIOLATION OR A WRITTEN STATEMENT SIGNED BY THE PERSON IN WHICH
16 THE PERSON ADMITS THE ALLEGATIONS, AGREES TO ACQUIRE ANY REQUIRED PERMIT AND
17 AGREES TO REMEDY THE VIOLATION, DAMAGE OR INTERFERENCE IN ACCORDANCE WITH THE
18 TERMS DETERMINED BY THE CHIEF ENGINEER.

19 2. DENY THE ALLEGATIONS BY DOING EITHER OF THE FOLLOWING:

20 (a) APPEARING IN PERSON, BY ATTORNEY OR BY ANOTHER DESIGNATED
21 REPRESENTATIVE AT THE TIME AND LOCATION GIVEN IN THE NOTICE OF VIOLATION.

22 (b) MAILING OR DELIVERING TO THE CHIEF ENGINEER A FORM PROVIDED WITH
23 THE NOTICE OF VIOLATION OR A WRITTEN STATEMENT SIGNED BY THE PERSON DENYING
24 THE ALLEGATIONS AND REQUESTING A HEARING ON THE MATTER.

25 C. ON REQUEST FOR A HEARING, THE HEARING OFFICER SHALL SET A DATE,
26 TIME AND PLACE FOR A HEARING AND SERVE A NOTICE OF HEARING ON THE PERSON
27 ALLEGED TO BE IN VIOLATION AND PROVIDE A NOTICE OF THE HEARING TO THE CHIEF
28 ENGINEER. SERVICE OF NOTICE SHALL BE BY PERSONAL DELIVERY OR CERTIFIED MAIL,
29 RETURN RECEIPT REQUESTED, OR BY ANY OTHER METHOD REASONABLY CALCULATED TO
30 EFFECT ACTUAL NOTICE ON THE ALLEGED VIOLATOR, THE CHIEF ENGINEER AND EVERY
31 OTHER PARTY TO THE ACTION.

32 D. THE HEARING OFFICER SHALL BE APPOINTED BY THE BOARD OF DIRECTORS
33 AND MAY BE AN EMPLOYEE OF THE DISTRICT. DECISIONS OF THE HEARING OFFICER OR
34 BY THE BOARD OF HEARING REVIEW SHALL BE AVAILABLE TO ANY PARTY TO THE
35 HEARING. THE BOARD OF DIRECTORS SHALL ADOPT WRITTEN RULES OF PROCEDURE FOR
36 THE HEARING AND REVIEW OF HEARINGS. THESE RULES SHALL BE ADOPTED IN THE SAME
37 MANNER AS FLOODPLAIN ORDINANCES.

38 E. AT THE HEARING, A REPRESENTATIVE OF THE DISTRICT SHALL PRESENT
39 EVIDENCE OF THE VIOLATION DESCRIBED IN THE NOTICE OF HEARING. THE COUNTY
40 ATTORNEY MAY PRESENT EVIDENCE ON BEHALF OF THE DISTRICT. THE NOTICED PARTY
41 OR ATTORNEY OR OTHER DESIGNATED REPRESENTATIVE SHALL BE GIVEN THE OPPORTUNITY
42 TO PRESENT EVIDENCE AT THE HEARING. AFTER COMPLETION OF THE HEARING, THE
43 HEARING OFFICER SHALL ISSUE A WRITTEN FINDING, A RECOMMENDATION FOR THE
44 APPROPRIATE MEASURES TO BE TAKEN TO ABATE OR AMELIORATE ANY HARM OR DAMAGE

1 ARISING FROM THE VIOLATION AND THE IMPOSITION OF ANY CIVIL PENALTIES
2 ATTRIBUTED TO THE VIOLATION.

3 F. THE HEARING OFFICER'S WRITTEN FINDING SHALL BE SUBMITTED TO THE
4 CHIEF ENGINEER AND THE NOTICED PARTY WITHIN THIRTY DAYS AFTER THE DATE OF THE
5 HEARING. ON RECEIPT OF THE HEARING OFFICER'S FINDINGS, DETERMINATION AND
6 RECOMMENDATION, THE CHIEF ENGINEER SHALL ISSUE A FINAL DECISION AND ORDER.
7 THE CHIEF ENGINEER'S FINAL DECISION AND ORDER MAY BE IN ANY FORM AS ADOPTED
8 BY THE BOARD OF DIRECTORS PURSUANT TO ITS AUTHORITY UNDER THIS CHAPTER AND
9 MAY INCLUDE A DETERMINATION OF VIOLATION, AN ORDER DIRECTING THAT MEASURES BE
10 TAKEN TO ABATE OR AMELIORATE ANY HARM OR DAMAGE ARISING FROM THE VIOLATION
11 AND THE IMPOSITION OF A CIVIL PENALTY.

12 G. ON WRITTEN REQUEST OF ANY PARTY WHO IS SUBJECT TO THE DECISION AND
13 ORDER OF THE CHIEF ENGINEER PURSUANT TO THIS SECTION, THE BOARD OF HEARING
14 REVIEW MAY REVIEW ANY DECISION AND ORDER OF THE CHIEF ENGINEER. THE WRITTEN
15 REQUEST FOR REVIEW SHALL BE DELIVERED TO THE CLERK OF THE BOARD OF DIRECTORS
16 WITHIN FIFTEEN DAYS AFTER THE DATE OF THE FINAL DECISION AND ORDER.

17 H. IF THE PERSON ALLEGED TO BE IN VIOLATION CONTINUES THE VIOLATION
18 AFTER THE CHIEF ENGINEER HAS ISSUED A FINAL DECISION AND ORDER OR AFTER THE
19 BOARD OF HEARING REVIEW HAS COMPLETED ITS REVIEW PURSUANT TO THIS SECTION,
20 THE CHIEF ENGINEER MAY APPLY FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY
21 OR PERMANENT INJUNCTION FROM THE SUPERIOR COURT ACCORDING TO THE ARIZONA
22 RULES OF CIVIL PROCEDURE. A DECISION TO SEEK INJUNCTIVE RELIEF DOES NOT
23 PRECLUDE OTHER FORMS OF RELIEF OR ENFORCEMENT AGAINST THE VIOLATOR. THE
24 REMEDIES PRESCRIBED BY THIS SECTION ARE CUMULATIVE AND DO NOT PREVENT THE
25 DISTRICT FROM SEEKING INJUNCTIVE RELIEF AT ANY TIME.

26 I. THE CHIEF ENGINEER MAY DESIGNATE ANOTHER PERSON TO CARRY OUT THE
27 CHIEF ENGINEER'S POWERS AND DUTIES PRESCRIBED BY THIS SECTION AND THAT
28 DESIGNEE IS AUTHORIZED TO TAKE ALL ACTIONS PRESCRIBED BY THIS SECTION IN
29 PLACE OF THE CHIEF ENGINEER.

30 48-3615.02. Judicial review; remedies

31 THE FINAL DECISION OF THE BOARD OF HEARING REVIEW IS SUBJECT TO
32 JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. A DISTRICT THAT
33 HAS ESTABLISHED CIVIL PENALTIES FOR VIOLATIONS OF ITS REGULATIONS OR
34 ORDINANCES OR FOR DAMAGE OR INTERFERENCE TO ITS FACILITIES IS NOT PRECLUDED
35 FROM PURSUING OTHER REMEDIES PROVIDED BY LAW.